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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/551,791	07/12/2006	Jean-Paul Cerveny	0514-1215	5656
466 7590 03/31/2009 YOUNG & THOMPSON 209 Madison Street Suite 500 ALEXANDRIA, VA 22314			EXAMINER BUL, LUAN KIM	
			ART UNIT 3728	PAPER NUMBER
			MAIL DATE 03/31/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/551,791

**Applicant(s)**

CERVENY, JEAN-PAUL

**Examiner**

Luan K. Bui

**Art Unit**

3728

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14, 30 and 31 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 30 and 31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S5108)  
Paper No(s)/Mail Date 9/27/05
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

1. Applicant's election without traverse of Group I, claims 1-14, 30 and 31 in the reply filed on 1/16/2009 is acknowledged. Non-elected claims 15-29 have been canceled by the Applicant.

### ***Drawings***

2. The drawings are objected to because the sectional views A-A and B-B in Figures 3, 5, 6, 10, 11, 14, 15 and 26 should be designated by Arabic or Roman numerals corresponding to the view number of the sectional view (MPEP 1.84(h)(3)). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-14, 30 and 31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are replete with indefinite language too numerous to mention specifically, and should be revised carefully. For example only, in claim 1, the phrases "said cap" (two places), "the cap 3", "said at least one breakage means", "the substance(s)" and "the end projecting element(s)" lack proper antecedent basis. In claim 2, the phrase "the cap" (two places) lacks proper antecedent basis and should be consistent with claim 1. In claim 4, the phrases "the end", "the breakage means", "the hinge", "said breakage means" and "said means" lack proper antecedent

basis and should be consistent with claim 1. In claim 4, the phrase “may be” renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. In claim 5, the phrases “the cap” and “said cap” lack proper antecedent basis and should be consistent. In claim 6, the phrases “the cap”, “the intermediate part” and “said intermediate part” lack proper antecedent basis and should be consistent with claim 1. In claim 7, “the cap” lacks proper antecedent basis. The phrases “the substance(s)” in claims 8-12 and “the substance or substances” in claim 13 lack proper antecedent basis. In claim 12, the phrase “selected from the group made up of ... or any composition...” is alternative and indefinite and an improper Markush group. In claims 14 and 31, the phrases “the cap”, “said cap” and “the substance(s)” lack proper antecedent basis and should be consistent. In many claims such as claims 1, 3 and others, the term “(s)” must be deleted because parenthesis is used for containing reference numerals only.

The applicant is required to make corrections to the claims wherever appropriate in order to clarify same. If applicant continues to prosecute the application, revision of the specification and claims to present the application in proper form is required. While an application can be amended to make it clearly understandable, no subject matter can be added that was not disclosed in the application as originally filed.

#### ***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(c) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for

patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 2 and 4-13 are rejected under 35 U.S.C. 102(e) as being anticipated by Stern et al. (2002/0066680; hereinafter Stern'680). To the extent that the Examiner can determine the scope of the claims, Stern'680 discloses a sealed capsule (20) comprising a deformable membrane (22) sealed at a base by a piercable cap (26) so as to define a sealed volume (25) for containing at least one substance (18) between the deformable membrane and the piercable cap. The capsule having at least one integrated breakage means (28, 32, 34) for the piercable cap (3) capable of tearing it to release an effective quantity of the substance following sufficient deformation of the deformable membrane due to an external mechanical force applied thereto. The capsule further including at least one intermediate part (30) provided between the deformable membrane and the piercable cap. The intermediate part having the at least one integrated breakage means that can be activated when there is sufficient deformation thereof and in that the intermediate part is in the form of a peripheral ring (34) on which rests locally, by means of a hinge portion (Figure 4), an arched element (30) taking on substantially and at least locally the form of the deformable membrane in its initial state and of which the free end (32) is produced in the form of at least one projecting or pointed element directed towards the piercable cap, a useful support surface being provided on the arched element that is capable of transmitting an external mechanical force applied on the deformable membrane by a user that is sufficient to cause an end projecting element to tip in order to break the piercable cap to release the substance. As to claim 4, the end projecting element or the breakage means of Stern'680 is inherently capable to be equipped with a slender tie or bridge performing the function of a breakage bridge.

As to claims 9-13, see paragraph [0012].

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stern'680.

Stern'680 discloses the capsule as above comprises the peripheral ring (34) and the hinge portion are produced in a single piece and the single piece appears from a plastic material. To the extent that Stern'680 fails to disclose the single piece by injection-molding of a synthetic material, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the single piece of Stern'680 so it is formed by injection-molding of a synthetic material since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

9. Claims 14, 30 and 31 are rejected under 35 U.S.C. 103(a) as being unpatentable over The Japanes Publication No. 2000217885 to Takashi or Mollstam et al. (6,513,650; hereinafter Mollstam'650) in view of Stern'680. Takashi discloses a stopper (8, 11, 12) for a receptacle (6) comprising a base plate (8, 11) for fixing on the receptacle and closing the receptacle by means of a capsule (1) and a rigid protective cover (12). Mollstam'650 discloses a stopper (10, 24, 34,

38) for a receptacle (14) comprising a base plate (24, 38) for fixing on the receptacle and closing the receptacle by means of a capsule (16) and a rigid protective cover (34). Takashi or Mollstam'650 also discloses the other limitations of the claims except for the capsule according to claim 1. Stern'680 discloses the capsule having all the limitations of claim 1 (see above). It would have been obvious to one having ordinary skill in the art in view of Stern'680 to modify the capsule of Takashi or Mollstam'650 so the capsule comprises all the limitations of claim 1 to facilitate dispensing the substance and/or to allow the stopper of Takashi or Mollstam'650 for holding various types of capsules.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is 571-272-4552. The examiner can normally be reached on 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

lkb  
March 31, 2009

/Luan K. Bui/  
Primary Examiner  
Art Unit 3728